

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

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FILE: B-217422 DATE: February 27, 1985  
MATTER OF: Lucco Art Studio Inc.

## DIGEST:

1. Protester's alleged conversations with contracting official regarding two alleged solicitation improprieties cannot be viewed as protests to the contracting agency where conversation on one issue was merely an informational request and was not a protest and the contracting agency denies that conversation on other issue occurred. Accordingly, where protest alleging these solicitation improprieties was filed initially with GAO after bid opening, it is untimely.
2. Although protester alleges that it was not advised of the requirement concerning the time for filing of a GAO protest alleging solicitation improprieties, an untimely protest may not be considered because bidders are on constructive notice of the requirement.

Lucco Art Studio Inc. (Lucco) protests invitation for bids (IFB) No. WFCO-E4-R-4807-12-6-84 issued by the General Services Administration. Lucco objects to the IFB on the grounds that it fails to indicate the contractor liability insurance required and it is prejudicial to contractors not located in the National Capital Region. We dismiss the protest as untimely.

Lucco's protest concerns alleged improprieties apparent on the face of the solicitation. Under our procedures, such protests must be filed with either the contracting agency or our Office prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984). In the event a protest of an alleged solicitation impropriety is timely filed initially with the contracting agency, a subsequent protest to our Office will be considered on the merits if it is filed within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R.

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§ 21.2(a) (1984). Here, the bids were opened on December 6, 1984, but Lucco did not file its protest with our Office until December 19. Thus, for our Office to consider Lucco's protest on the merits, the firm must have filed a protest on these issues with the contracting agency, either orally or in writing, prior to bid opening.

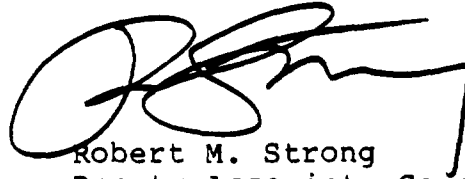
Lucco states that prior to bid opening it discussed both of its objections to the solicitation with the contract specialist. We must determine whether either or both of these alleged discussions constituted a protest to the contracting agency. First, with regard to the contractor liability insurance required, Lucco states that it asked the contract specialist for an estimate of the insurance required since the solicitation did not contain this information. Based on Lucco's description of this conversation, this inquiry was merely a request for information and was not a protest to the contracting agency. See Propserve Incorporated, B-192154, Feb. 28, 1979, 79-1 C.P.D. ¶ 138.

As to the solicitation being prejudicial to contractors not located in the National Capital Region, Lucco states that in a subsequent conversation with the contract specialist, it suggested a means of delivery different than that provided in the solicitation. Lucco states that the contract specialist warned that, if it included the suggested alternative in its bid, its bid may be rejected. Lucco's account of this conversation indicates that it may have been intended as an oral protest to the contracting agency. The contracting officer and his staff, however, report no recollection or record of the alleged conversation. Although we generally resolve disputes over timeliness in the protester's favor, see Builder's Security Hardware, Inc., B-213599.2, Feb. 15, 1984, 84-1 C.P.D. ¶ 207, the record must reflect at least some reasonable degree of evidence to support the protester's version of the facts. Universal Design Systems, Inc.--Reconsideration, B-211547.2, June 28, 1983, 83-2 C.P.D. ¶ 41. The record here only shows conflicting statements by the protester and the contracting agency and, consequently, the protester has not met the burden of proving that this conversation occurred. See ADB-Alnaco Inc., B-212666, May 22, 1984, 84-1 C.P.D. ¶ 537.

Accordingly, we are unable to conclude that Lucco filed a protest with the contracting agency on either of the alleged solicitation improprieties prior to bid opening. Under these circumstances, Lucco does not appear to have filed any protest against the alleged improprieties until it

filed its protest with our Office after bid opening. Therefore, the protest is untimely and will not be considered on the merits.

Although Lucco contends that it was not advised by our Office or others it consulted that our Bid Protest Procedures require that protests alleging solicitation improprieties be filed prior to bid opening, this does not provide a basis for our Office to waive our procedures since bidders are on constructive notice of our Bid Protest Procedures since they are published in the Federal Register and the Code of Federal Regulations. See Westwood Pharmaceuticals Inc., B-214603, July 25, 1984, 84-2 C.P.D. ¶ 111.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name.

Robert M. Strong  
Deputy Associate General Counsel